

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1356

53rd Legislature
1993 Regular Session

Passed by the House April 19, 1993
Yeas 93 Nays 2

**Speaker of the
House of Representatives**

Passed by the Senate April 1, 1993
Yeas 28 Nays 18

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1356** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1356

AS AMENDED BY THE SENATE

Passed Legislature - 1993 Regular Session

State of Washington

53rd Legislature

1993 Regular Session

By House Committee on Environmental Affairs (originally sponsored by Representatives Rust, Horn, Roland and Valle; by request of Department of Health)

Read first time 02/15/93.

1 AN ACT Relating to enforcement of public water system requirements;
2 amending RCW 70.119A.030, 70.119A.040, and 70.119A.050; adding a new
3 section to chapter 70.119A RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 70.119A.030 and 1991 c 304 s 3 are each amended to
6 read as follows:

7 (1) The secretary or his or her designee or the local health
8 officer may declare a public health emergency. As limited by RCW
9 70.119A.040, the department may impose penalties for violations of laws
10 or regulations that are determined to be a public health emergency.

11 (2) As limited by RCW 70.119A.040, the department may impose
12 penalties for (~~failure to comply with an order of the department, or~~
13 ~~of an authorized local board of health, when the order:~~

14 ~~(a) Directs any person to stop work on the construction or~~
15 ~~alteration of a public water system when plans and specifications for~~
16 ~~the construction or alteration have not been approved as required by~~
17 ~~the regulations, or when the work is not being done in conformity with~~
18 ~~approved plans and specifications;~~

1 ~~(b) Requires any person to eliminate a cross-connection to a public~~
2 ~~water system by a specified time; or~~
3 ~~(c) Requires any person to cease violating any regulation relating~~
4 ~~to public water systems, to take specific actions within a specified~~
5 ~~time to place a public water system in compliance with regulations~~
6 ~~adopted under chapters 43.20 and 70.119 RCW, to apply for an operating~~
7 ~~permit as required under RCW 70.119A.110 or to comply with any~~
8 ~~conditions or requirements imposed as part of an operating permit))~~
9 violation of laws or rules regulating public water systems and
10 administered by the department of health.

11 **Sec. 2.** RCW 70.119A.040 and 1990 c 133 s 8 are each amended to
12 read as follows:

13 (1)(a) In addition to or as an alternative to any other penalty
14 ~~((provided)) or action allowed by law, ((every)) a person who ((commits~~
15 ~~any of the acts or omissions in RCW 70.119A.030 shall be subjected))~~
16 violates a law or rule regulating public water systems and administered
17 by the department of health is subject to a penalty ((in an amount of
18 not less than five hundred dollars. The maximum penalty shall be)) of
19 not more than five thousand dollars per day for every such violation,
20 or, in the case of a violation that has been determined to be a public
21 health emergency, a penalty of not more than ten thousand dollars per
22 day for every such violation. Every such violation shall be a separate
23 and distinct offense. The amount of fine shall reflect the health
24 significance of the violation and the previous record of compliance on
25 the part of the public water supplier. In case of continuing
26 violation, every day's continuance shall be a separate and distinct
27 violation.

28 (b) In addition, a person who constructs, modifies, or expands a
29 public water system or who commences the construction, modification, or
30 expansion of a public water system without first obtaining the required
31 departmental approval is subject to penalties of not more than five
32 thousand dollars per service connection, or, in the case of a system
33 serving a transient population, a penalty of not more than four hundred
34 dollars per person based on the highest average daily population the
35 system is anticipated to serve. The total penalty that may be imposed
36 pursuant to this subsection (1)(b) is five hundred thousand dollars.

37 (c) Every person who, through an act of commission or omission,
38 procures, aids, or abets ~~((in the))~~ a violation ~~((shall be))~~ is

1 considered to have violated the provisions of this section and (~~shall~~
2 be)) is subject to the penalty provided in this section.

3 (2) The penalty provided for in this section shall be imposed by a
4 notice in writing to the person against whom the civil (~~fine~~) penalty
5 is assessed and shall describe the violation. The notice shall be
6 personally served in the manner of service of a summons in a civil
7 action or in a manner that shows proof of receipt. A penalty imposed
8 by this section is due twenty-eight days after receipt of notice unless
9 application for (~~remission or mitigation is made as provided in~~
10 ~~subsection (3) of this section or unless application for~~) an
11 adjudicative proceeding is filed as provided in subsection (~~(4)~~) (3)
12 of this section.

13 (3) (~~Within fourteen days after the notice is received, the person~~
14 ~~incurring the penalty may apply in writing to the department for the~~
15 ~~remission or mitigation of such penalty. Upon receipt of the~~
16 ~~application, the department may remit or mitigate the penalty upon~~
17 ~~whatever terms the department in its discretion deems proper, giving~~
18 ~~consideration to the degree of hazard associated with the violation,~~
19 ~~provided the department deems such remission or mitigation to be in the~~
20 ~~best interests of carrying out the purposes of this chapter. The~~
21 ~~department shall not mitigate the fines below the minimum penalty~~
22 ~~prescribed in subsection (1) of this section. The department shall~~
23 ~~have authority to ascertain the facts regarding all such applications~~
24 ~~in such reasonable manner as it may deem proper. When an application~~
25 ~~for remission or mitigation is made, a penalty incurred under this~~
26 ~~section is due twenty-eight days after receipt of the notice setting~~
27 ~~forth the disposition of the application, unless an application for an~~
28 ~~adjudicative proceeding to contest the disposition is filed as provided~~
29 ~~in subsection (4) of this section.~~

30 (~~4~~) Within twenty-eight days after notice is received, the person
31 incurring the penalty may file an application for an adjudicative
32 proceeding and may pursue subsequent review as provided in chapter
33 34.05 RCW and applicable rules of the department or board of health.

34 (~~(5)~~) (4) A penalty imposed by a final administrative order
35 (~~after an adjudicative proceeding~~) is due upon service of the final
36 administrative order. A person who fails to pay a penalty assessed by
37 a final administrative order within thirty days of service of the final
38 administrative order shall pay, in addition to the amount of the
39 penalty, interest at the rate of one percent of the unpaid balance of

1 the assessed penalty for each month or part of a month that the penalty
2 remains unpaid, commencing with the month in which the notice of
3 penalty was served and such reasonable attorney's fees as are incurred
4 in securing the final administrative order.

5 (5) A person who institutes proceedings for judicial review of a
6 final administrative order assessing a civil penalty under this chapter
7 shall place the full amount of the penalty in an interest bearing
8 account in the registry of the reviewing court. At the conclusion of
9 the proceeding the court shall, as appropriate, enter a judgment on
10 behalf of the department and order that the judgment be satisfied to
11 the extent possible from moneys paid into the registry of the court or
12 shall enter a judgment in favor of the person appealing the penalty
13 assessment and order return of the moneys paid into the registry of the
14 court together with accrued interest to the person appealing. The
15 judgment may award reasonable attorney's fees for the cost of the
16 attorney general's office in representing the department.

17 ~~(6) ((The attorney general may bring an action in the name of the~~
18 ~~department in the superior court of Thurston county, or of any county~~
19 ~~in which such violator may do business, to collect a penalty.~~

20 ~~(7))~~ If no appeal is taken from a final administrative order
21 assessing a civil penalty under this chapter, the department may file
22 a certified copy of the final administrative order with the clerk of
23 the superior court in which the public water system is located or in
24 Thurston county, and the clerk shall enter judgment in the name of the
25 department and in the amount of the penalty assessed in the final
26 administrative order.

27 (7) A judgment entered under subsection (5) or (6) of this section
28 shall have the same force and effect as, and is subject to all of the
29 provisions of law relating to, a judgment in a civil action, and may be
30 enforced in the same manner as any other judgment of the court in which
31 it is entered.

32 (8) All penalties imposed under this section shall be payable to
33 the state treasury and credited to the general fund.

34 (9) Except in cases of public health emergencies, the department
35 may not impose monetary penalties under this section unless a prior
36 effort has been made to resolve the violation informally.

37 **Sec. 3.** RCW 70.119A.050 and 1989 c 422 s 8 are each amended to
38 read as follows:

1 Each local board of health that is enforcing the regulations under
2 an agreement with the department allocating state and local
3 responsibility is authorized to impose and collect civil penalties for
4 violations within the area of its responsibility under the same
5 limitations and requirements imposed upon the department by RCW
6 70.119A.030 and 70.119A.040, except that judgment shall be entered in
7 the name of the local board penalties shall be placed into the general
8 fund of the county, city, or town operating the local board of
9 health(~~(, and the prosecuting attorney, or city, or town attorney shall~~
10 ~~bring the actions to collect the unpaid penalties)~~).

11 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.119A
12 RCW to read as follows:

13 (1)(a) Except as otherwise provided in (b) of this subsection, the
14 secretary or his or her designee shall have the right to enter a
15 premises under the control of a public water system at reasonable times
16 with prior notification in order to determine compliance with laws and
17 rules administered by the department of health to test, inspect, or
18 sample features of a public water system and inspect, copy, or
19 photograph monitoring equipment or other features of a public water
20 system, or records required to be kept under laws or rules regulating
21 public water systems. For the purposes of this section, "premises
22 under the control of a public water system" does not include the
23 premises or private property of a customer of a public water system
24 past the point on the system where the service connection is made.

25 (b) The secretary or his or her designee need not give prior
26 notification to enter a premises under (a) of this subsection if the
27 purpose of the entry is to ensure compliance by the public water system
28 with a prior order of the department or if the secretary or the
29 secretary's designee has reasonable cause to believe the public water
30 system is violating the law and poses a serious threat to public health
31 and safety.

32 (2) The secretary or his or her designee may apply for an
33 administrative search warrant to a court official authorized to issue
34 a criminal search warrant. An administrative search warrant may be
35 issued for the purposes of inspecting or examining property, buildings,
36 premises, place, books, records, or other physical evidence, or
37 conducting tests or taking samples. The warrant shall be issued upon

1 probable cause. It is sufficient probable cause to show any of the
2 following:

3 (a) The inspection, examination, test, or sampling is pursuant to
4 a general administrative plan to determine compliance with laws or
5 rules administered by the department; or

6 (b) The secretary or his or her designee has reason to believe that
7 a violation of a law or rule administered by the department has
8 occurred, is occurring, or may occur.

9 (3) The local health officer or the designee of a local health
10 officer of a local board of health that is enforcing rules regulating
11 public water systems under an agreement with the department allocating
12 state and local responsibility is authorized to conduct investigations
13 and to apply for, obtain, and execute administrative search warrants
14 necessary to perform the local board's agreed-to responsibilities under
15 the same limitations and requirements imposed on the department under
16 this section.

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